

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation
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Attorneys for Complainant

BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

OF THE STATE OF CALIFORNIA

In the Matter of:)	
)	
THE COMMISSIONER OF FINANCIAL)	
PROTECTION AND INNOVATION,)	
)	CONSENT ORDER
Complainant,)	
v.)	
)	
ESCAPOLOGY, LLC., also known as)	
ESCAPOLOGY,)	
)	
Respondent.)	
)	

This Consent Order is entered into between the Commissioner of Financial Protection and Innovation (“Commissioner”) and Escapology, LLC., also known as Escapology (“Escapology”) and together with Commissioner, (“Parties”) and is made with respect to the following facts:

I.

RECITALS

A. The Commissioner is the head of the Department of Financial Protection and Innovation (“Department”) and is responsible for administering and enforcing the Franchise Investment Law (“FIL”) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises in California. To register a franchise, a franchisor must file an application that includes a

¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 Franchise Disclosure Document (“FDD”) with the Department for review, in accordance with
2 sections 31111 and 31114. The FIL requires franchisors to disclose certain material information that
3 is intended to provide prospective franchisees with facts upon which to make an informed decision
4 to purchase a franchise, as stated in section 31001.

5 B. At all relevant times, Escapology was and is a Florida limited liability company with
6 a principal place of business located at 11951 International Drive 2D5, Orlando, Florida 32821.
7 Escapology offers and sells franchises for the right to independently establish and operate live
8 escape rooms to consumers. Escapology engaged in the offer and sale of Escapology franchises in
9 California.

10 C. At all relevant times, Escapology was registered to offer and sell franchises in
11 California by the Department during the following times: April 16, 2016 to April 20, 2017;
12 December 7, 2017 to April 20, 2018; and July 24, 2019 to April 20, 2020. Escapology filed
13 application number 28261 on May 9, 2023 with the Department (2023 Application). The 2023
14 Application is pending approval by the Department.

15 D. Pursuant to the FIL, a franchisor has at least three (3) ways to comply with negotiated
16 sales requirements set forth in sections 31109.1, 31123, and Rule 310.100.2. A negotiated sale
17 occurs when the terms of the sale of a franchise varies from the terms set forth in a registered FDD
18 and franchise agreement.

19 E. On or about May 9, 2023, Escapology filed the 2023 Application with the
20 Department. In the process of reviewing the 2023 Application, the Department requested further
21 documentation from Escapology, including signed franchise agreements pertaining to the San
22 Francisco (2018) and Lake Elsinore (2018) Escapology outlets. The Lake Elsinore outlet franchise
23 agreement included an addendum. The Department discovered that the franchise agreement/sale
24 terms for the San Francisco and Lake Elsinore outlets differed than the terms set forth in the
25 registered FDD and franchise agreement that were filed with the Commissioner in application
26 number 9505. At no time did Escapology file with the Department negotiated sales notices. In a
27 letter to the Department dated June 27, 2023, in response to the Department’s request for further
28 information, Escapology admitted that their counsel did not file the necessary negotiated sales

1 notices with the Department as required by the FIL, in violation of sections 31109.1, 31123, and
2 Rule 310.100.2.

3 F. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
4 statement of a material fact in any application, notice or report filed with the Commissioner under
5 the FIL, or willfully to omit to state in any such application, notice, or report any material fact which
6 is required to be stated therein.

7 G. Escapology failed to disclose the material fact of the negotiated sales for the San
8 Francisco and Lake Elsinore outlets as described in Paragraph E herein to the Commissioner.
9 Escapology also failed to disclose the material fact to the Commissioner that Escapology failed to
10 comply with the negotiated sales provisions of the FIL as required, prior to the 2023 information
11 request from the Department in violation of section 31200.

12 H. Pursuant to section 31201, it is unlawful for any person to offer or sell a franchise in
13 this state by means of any written or oral communication not enumerated in section 31200, which
14 includes an untrue statement of a material fact or omits to state a material fact necessary in order to
15 make the statements made, in the light of the circumstances under which they were made, not
16 misleading.

17 I. Escapology made untrue misleading statements of material facts to California
18 consumers by filing an FDD and franchise agreement with set terms and material statements in an
19 FIL application (number 9505) but then providing misleading materially different terms in the
20 offer/sale of the San Francisco and Lake Elsinore outlets which differ dramatically than the
21 registered terms in violation of section 31201.

22 J. Pursuant to section 31150, every franchisor or subfranchisor offering franchises for
23 sale in California shall at all times keep and maintain a complete set of books, records, and accounts
24 of such sales.

25 K. In or about June to July 2023, the Department requested the FDD receipts for the San
26 Francisco and Lake Elsinore outlet offers/sales. On or about July 27, 2023, Escapology disclosed to
27 the Department that they were not able to provide the Lake Elsinore outlet FDD receipt, in violation
28 of section 31150.

L. Pursuant to section 31119, it is unlawful to sell any franchise without first providing a prospective franchisee with the FDD at least fourteen (14) days prior to the execution of a franchise agreement or receipt of consideration.

M. Escapology failed to provide a FDD receipt for the Lake Elsinore outlet offer/sale. Therefore, Escapology is presumed to not provide an FDD to the Lake Elsinore outlet franchisee, in violation of section 31119.

N. The Commissioner finds that Escapology failed to comply with the negotiated sales provisions of the FIL in violation of sections 31109.1, 31123, and Rule 310.100.2. A negotiated sale occurs when the terms of the sale of a franchise varies from the terms set forth in a registered FDD and franchise agreement.

O. The Commissioner also finds that Escapology made an untrue statement of material fact or willfully omitted to state a material fact required to be stated therein to the Commissioner when it filed FDDs without disclosing it engaged in negotiated sales on at least two (2) occasions in violation of section 31200.

P. The Commissioner further finds that Escapology sold franchises using FDDs that omitted to state the material fact that it had sold franchises with different material terms in negotiated sales on at least two (2) occasions, in violation of section 31201.

Q. The Commissioner moreover finds that Escapology failed to keep and maintain a complete set of books, records, and accounts of sales made in California in one instance when it failed to keep and provide a signed FDD receipt page for the Lake Elsinore outlet offer/sale, in violation of section 31150.

R. The Commissioner finally finds that Escapology violated section 31119 by not providing a prospective/actual buyer with an FDD at least fourteen (14) days prior to the execution of a franchise agreement or receipt of consideration.

S. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the Parties agree as follows:

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1 II.

2 **TERMS AND CONDITIONS**

3 1. **Purpose.** This Consent Order resolves the issues before the Commissioner,
4 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
5 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
6 and provisions of the applicable law.

7 2. **Desist and Refrain Order.** Pursuant to section 31406, Escapology, LLC., also known
8 as Escapology, is hereby ordered to desist and refrain from the violations set forth herein, in
9 violation of Corporations Code sections 31109.1, 31123, and Rule 310.100.2 (Negotiated Sales),
10 sections 31200, 31201, 31150, and 31119 and from any violations of the Franchise Investment Law.
11 The issuance of this order is necessary, in the public interest, for the protection of investors, and is
12 consistent with the purposes, policies, and provisions of the Franchise Investment Law.

13 3. **Penalties.** Escapology, LLC., also known as Escapology, shall pay an administrative
14 penalty of \$12,500 (“Penalties”) no later than fifteen (15) days after the effective date of this
15 Consent Order as defined in paragraph 21 (“Effective Date”). The Penalties must be made payable
16 in the form of a cashier’s check or Automated Clearing House deposit to the Department and
17 transmitted to the attention of Accounting-Legal at the Department of Financial Protection and
18 Innovation, 2101 Arena Boulevard, Sacramento, California 95834. Notice of the payment must be
19 concurrently sent via email to marisa.urteaga-watkins@dfpi.ca.gov. Failure to pay Penalties in a
20 timely manner shall be deemed to be a material breach of this Consent Order.

21 4. **Waiver of Hearing Rights.** Escapology acknowledges that the Commissioner is
22 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
23 charges contained in this Consent Order. Escapology hereby waives the right to any hearings, and to
24 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
25 Administrative Procedure Act, the Code of Civil Procedure, or any other provision of law.
26 Escapology further expressly waives any requirement for the filing of any accusation pursuant to
27 Government Code section 11415.60, subdivision (b). By waiving such rights, Escapology
28 effectively consents to this Consent Order and all of its terms becoming final.

1 5. Failure to Comply with Consent Order. Escapology agrees that if it fails to comply
2 with the Desist and Refrain Order in this Consent Order, or fails to timely cure any breach to the
3 satisfaction of the Commissioner, the Commissioner may, in addition to all other available remedies
4 it may invoke under the FIL, summarily suspend, revoke, or deny its FIL registration (if applicable).
5 Escapology stipulates to the finality of any such FIL registration suspensions, revocations, or
6 denials that the Commissioner may order. Escapology waives any notice and hearing rights to
7 contest such summary suspensions, revocations, or denials which may be afforded under the FIL,
8 the California Administrative Procedure Act, the California Code of Civil Procedure, or any other
9 provision of law in connection therewith.

10 6. Information Willfully Withheld or Misrepresented. This Consent Order may be
11 revoked, and the Commissioner may pursue any and all remedies available under law against
12 Escapology, if the Commissioner discovers that Escapology knowingly or willfully withheld or
13 misrepresented information used for and relied upon in this Consent Order.

14 7. Future Actions by Commissioner. If Escapology fails to comply with any terms of
15 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
16 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
17 against Escapology, or any of its partners, owners, officers, shareholders, directors, employees, or
18 successors for any and all unknown violations of the FIL or any other law under the Commissioner's
19 jurisdiction.

20 8. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
21 ability to assist any other government agency (whether city, county, state, or federal) with any
22 administrative, civil, or criminal action brought by that agency against Escapology, or any other
23 person based upon any of the activities alleged in this matter or otherwise.

24 9. Headings. The headings to the paragraphs of this Consent Order are inserted for
25 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
26 the provisions hereof.

27 10. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
28 interest.

1 11. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
2 Consent Order, it has relied solely on the statements set forth herein and the advice of its own
3 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
4 Order, it has placed no reliance on any statement, representation, or promise of any other party, or
5 any other person or entity not expressly set forth herein, or upon the failure of any party or any
6 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
7 The Parties have included this clause: (1) to preclude any claim that any party was in any way
8 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
9 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

10 12. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
11 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
12 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
13 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
14 or provision of this Consent Order by the other Party will be considered a waiver of any other
15 condition or provision or of the same condition or provision at another time.

16 13. Full Integration. This Consent Order is the final written expression and the complete
17 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
18 between the Parties with respect to the subject matter hereof, and supersedes all prior or
19 contemporaneous agreements, negotiations, representations, understandings, and discussions
20 between and among the Parties, their respective representatives, and any other person or entity with
21 respect to the subject matter covered hereby.

22 14. Governing Law. This Consent Order will be governed by and construed in
23 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
24 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
25 inconvenient forum to the maintenance of such action or proceeding in such court.

26 15. Counterparts. This Consent Order may be executed in one or more separate
27 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
28 together constitute a single document.

1 16. Effect Upon Future Proceedings. If Escapology applies for any license, registration,
2 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
3 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
4 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

5 17. Voluntary Agreement. Escapology enters into this Consent Order voluntarily and
6 without coercion and acknowledges that no promises, threats, or assurances have been made by the
7 Commissioner or any officer, or agent thereof, about this Consent Order. The Parties each
8 represent and acknowledge that he, she, or it is executing this Consent Order completely voluntarily
9 and without any duress or undue influence of any kind from any source.

10 18. Notice. Any notice required under this Consent Order shall be provided to each
11 party at the following addresses:

12 To Escapology: Cameron McKinley, Esq.
13 Spadea Lignana, LLC.
14 232 N 2nd Street
15 Philadelphia, Pennsylvania 19106
 cmckinley@spadealaw.com

16 To the Commissioner: Marisa I. Urteaga-Watkins, Esq.,
17 Department of Financial Protection and Innovation
18 2101 Arena Blvd.
19 Sacramento, California 95834
 marisa.urteaga-watkins@dfpi.ca.gov

20 19. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an
21 original signature.

22 20. Public Record. Escapology hereby acknowledges that this Consent Order is and will
23 be a matter of public record.

24 21. Effective Date. This Consent Order shall become final and effective when signed by
25 all Parties and delivered by the Commissioner’s agent via e-mail to Escapology’s agent, Cameron
26 McKinley, Esq., at cmckinley@spadealaw.com.

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22. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: _____

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

By: _____
COLLEEN MONAHAN
Deputy Commissioner

Dated: _____

ESCAPOLOGY LLC., also known as ESCAPOLOGY

By: _____

CHARLES BURTON HEISS
Chief Executive Officer